

E-002/C-92-899 ORDER REQUIRING STATUS REPORT AND DECLINING  
ADDITIONAL INVOLVEMENT IN NEGOTIATIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
Marshall Johnson  
Cynthia A. Kitlinski  
Dee Knaak

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Complaint  
of LS Power Corporation Against  
Northern States Power Company

ISSUE DATE: August 30, 1993

DOCKET NO. E-002/C-92-899

ORDER REQUIRING STATUS REPORT  
AND DECLINING ADDITIONAL  
INVOLVEMENT IN NEGOTIATIONS

**PROCEDURAL HISTORY**

On April 12, 1993, the Commission issued its ORDER REQUIRING NEGOTIATIONS. The Commission directed the parties to conclude their negotiations and submit the results of those negotiations within 45 days of the Order, on or before May 27, 1993.

On May 27, 1993, Northern States Power Company (NSP or the Company) filed a report stating that it had entered into a Memorandum of Understanding (MOU) with LS Power Corporation (LS Power) and Genoa Generating Limited Partnership (Genoa) under which the Company committed to completing the final evaluations of the LS Power and Genoa proposals and negotiations with those companies within twenty-one days.

On June 11, 1993, the Commission issued its ORDER GRANTING TIME EXTENSION. The Commission granted NSP a twenty-one day time extension (until June 17, 1993) for the filing the report required by the Commission's April 12, 1993 Order in this matter.

On June 17, 1993, NSP filed a Memorandum further describing the process it had followed since its May 27, 1993 report. NSP stated that it had decided to purchase the intermediate capacity and associated energy from LS Power. The Company proposed to negotiate to conclusion a power purchase agreement with LS Power. NSP asked that the Commission waive the requirement of the April 12, 1993 Order that a completed Purchase Power Agreement be filed at this time and permit it to carefully conclude its contract negotiations with LS Power.

On June 21, 1993, the Commission issued its Notice of Receipt of Reports and Comment Period. In its Notice, the Commission invited interested parties to comment on the Company's May 27 and June 17, 1993 filings.

On July 8, 1993, the Minnesota Department of Public Service (the Department) filed comments. The Department stated it believed that the Company had complied with the Commission's requirements and that it would not comment on the prudence of the Company's decision to select LS Power, but would do so after careful review in NSP's next rate case. The Department also recommended that the Commission grant the Company additional time to conclude the contract with LS Power.

On July 9, 1993, the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed a letter stating that it did not object to giving NSP additional time to conclude its contract with LS Power.

On July 9, 1993 by FAX and July 12, 1993 by mail, Genoa Generating Limited Partnership (Genoa) filed comments requesting that the Commission 1) direct NSP to review its analysis of Genoa's project and allow Genoa to file comments on that analysis prior to authorizing NSP to proceed with finalizing a power purchase agreement with LS Power and allow it (Genoa) to file comments on NSP's analysis and 2) clarify that NSP should immediately proceed to finalize an agreement with Genoa in the event NSP and LS Power are unable to execute a power purchase agreement.

On July 19, 1993, the Department, NSP, and LS Power filed comments opposing Genoa's requests, which all three parties viewed as unnecessarily delaying resolution of this proceeding. Responding to the Department's comments regarding the timing of the prudence review for the NSP-LS Power contract, NSP argued that the Commission should not delay its review of that contract until NSP's next rate case.

On August 19, 1993, the Commission met to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **NSP's Request**

In its April 12, 1993 Order, the Commission directed NSP to conclude negotiations with several developers and file a report on those negotiations along with a contract with one of those parties within 45 days. At NSP's request, the Commission issued a subsequent Order extending the time for NSP to conclude its negotiations and file its report and finalized contract.

On June 17, 1993, NSP requested waiver of the Commission's requirement that it have filed a finalized contract. The Company indicated that its negotiations with Genoa had concluded but that it was continuing to negotiate with LS Power with the intention of concluding a contract with LS Power. NSP's request is in the

nature of a request for another extension of time to conclude its negotiations and file its finalized contract, as required by the Commission's previous Orders in this matter.

In light of the circumstances of this case, the Commission finds that additional time to conclude the matter is warranted. The Commission understands that progress has been made in this matter: rates and general terms have been discussed and agreed to during the negotiations to-date. At the same time, the Commission realizes the importance to NSP and its ratepayers of a contract that is carefully negotiated in all respects. Additional time will allow conscientious resolution of these matters. The Company indicated that it expects to finalize the contract before Thanksgiving and the Commission finds that this time is reasonable. To monitor continuing progress in this matter, the Commission will direct NSP to file a status report regarding negotiations on September 15, 1993.

#### Genoa's Requests

After learning that NSP had chosen to discontinue negotiations with it and to proceed to finalize a contract with LS Power, Genoa requested that the Commission require NSP to prepare and file a review of its decision to choose LS Power over Genoa. Genoa also asked that the Commission direct NSP to immediately recommence negotiations with Genoa in the event that negotiations between LS Power and NSP failed to produce a contract.

Regarding the first request, Genoa clearly hopes to add substantial elements to the process directed by the Commission in its April 12, 1993 Order in hopes of obtaining a second shot at NSP's contract. Genoa's request is untimely. The time for seeking reconsideration of the April 12, 1993 Order has long past. Minn. Rules, part 7830.4100. Further, the Commission is not inclined to postpone resolution of this matter even further by initiating consideration of this request on its own. Genoa is requesting that the Commission play a more interventionist role in NSP's contracting process than the Commission believes is warranted. According to Genoa, the Commission should review the cost and non-cost aspects of NSP's analysis before the contract is signed to ensure that NSP's decision is in the best interests of the ratepayers. Such intervention might benefit parties such as Genoa who have been de-selected in the process by NSP, but it is not necessary to protect ratepayers' interests. Subsequent review of the contract with disallowance of any costs imprudently incurred is adequate for that purpose.

With respect to Genoa's request that the Commission determine Genoa's right to have NSP immediately negotiate with it if the contract with LS Power does not materialize, the Commission finds that there is no need to make that determination in this Order. If NSP does not conclude a contract with LS Power, there will be adequate time to revisit Genoa's status while the Commission examines the reasons for the breakdown of contract negotiations between LS Power and NSP. In addition, the record to-date

indicates that Genoa is not a qualifying facility (QF) entitled to contract with NSP as a matter of right.

#### Prudence Review of NSP's Contract

The Department argued that the Commission should determine at this time (in this Order) that it will review the prudence of any contract that NSP enters into with LS Power in NSP's next rate case. NSP opposes the timing and docket placement of that decision. The Company would like the Commission to review and approve the prudence of its contract with LS Power in this docket, prior to and separate from the rate case, as soon as the Company reports the contract to the Commission. At this time, however, NSP simply requested that the Commission postpone deciding when and where it will review the prudence of the potential contract until after the contract has been signed. The question before the Commission at this time, therefore, is whether it will decide in this Order when and in what proceeding it will review the prudence of NSP's contract with LS Power.

The Company indicated that LS Power also preferred that the Commission defer that question until the contract was completely negotiated. The Company argued that the negotiating parties had already calculated the risk factor associated with it being unknown when and in what proceeding the Commission would review the contract for prudence. The Company stated that at this point negotiations would be altered and undoubtedly delayed if the Commission were to remove in this Order the doubt about that issue (when and in what proceeding it would review the contract).

The Commission is not convinced that it must decide when to review the prudence of the potential contract at this time. Moreover, there appears to be good reason to postpone deciding the matter, as requested by the negotiating parties. Therefore, the Commission will defer deciding the question to a later point in these proceedings.

#### ORDER

1. NSP's request for additional time to complete negotiations with LS Power is granted. The Company shall file with the Commission a status report regarding those negotiations on or September 15, 1993.
2. The requests by Genoa Generating Limited Partnership (Genoa) contained in its July 12, 1993 filing are denied.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

(S E A L)

Susan Mackenzie  
Acting Executive Secretary